

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

-----X

MASTEC NORTH AMERICA, INC.

Employer,

and

JOHN MURRAY, AN INDIVIDUAL

Case No: 01-RD-103288

Petitioner,

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 488, AFL-CIO,

Union,

-----X

EMPLOYER'S REQUEST FOR REVIEW OF THE
REGIONAL DIRECTOR'S DECISION TO HOLD THE PETITION
FOR DECERTIFICATION IN ABEYANCE

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I. INTRODUCTION

Pursuant to Section 102.71(b) of the National Labor Relations Board's ("NLRB" or "Board") Rules and Regulations, MasTec North America, Inc. ("MasTec," the "Company" or the "Employer"), submits this Request for Review of the Regional Director's April 23, 2013 decision (the "Decision") to cease processing the decertification petition (the "Decertification Petition" or the "Petition") in the instant case pending the adjudication of Case No. 34-CA-090246 alleging that certain provisions of the Employer's handbook violate Section 8(a)(1) of the Act. By holding the Decertification Petition in abeyance pending resolution of this particular unfair labor practice charge which challenges only the facial validity of a limited number of policies and which involves no issue of enforcement or actual interference with the Section 7 rights of unit employees – the Regional Director has disenfranchised unit employees who have made known their desire to decertify the International Brotherhood of Electrical Workers, Local 488, AFL-CIO ("Local 488" or "the Union") as their collective-bargaining representative. Review of the Decision is appropriate because the Regional Director departed from well-established Board precedent and applicable law. Moreover, the disenfranchisement of unit employees raises a substantial question of law and policy because the Regional Director's decision is inconsistent with the policy of the National Labor Relations Act of ensuring the protection and promotion of employee freedom of choice with respect to the decision whether or not to be represented by a union for purposes of collective bargaining. In addition, review of the Decision is appropriate because the unit employees' entitlement to the processing of their petition is a compelling reason for the Board to reconsider the application of the general "blocking" policy of holding in abeyance representation petitions where an unfair labor practice charge that affects the unit is pending under the aforementioned circumstances.

II. STATEMENT OF THE CASE

On or about April 22, 2013, John Murray, an individual employed by the Employer and represented by the Union, filed the Decertification Petition in the instant case. (See Exhibit A.) On or about April 22, 2013, the Regional Director sent notice to the parties that a representation hearing would be held on April 29, 2013. (See Exhibit B.) On or about April 23, 2013, the Regional Director, through Officer-In-Charge John S. Cotter, notified the parties that "pursuant to Agency policy, the petition is being held in abeyance pending investigation of the unfair labor practice charge filed in Case No. 34-CA-090246. Accordingly, the hearing scheduled for Monday, April 29, 2013, has been postponed indefinitely." (See Exhibit C.)

The unfair labor practice charge referenced in Mr. Cotter's letter, Case No. 34-CA-090246, was filed by the Union on October 2, 2012, and amended on November 21, 2012. (See Exhibit D.) The amended charge alleged the Employer violated Section 8(a)(1) by maintaining overly broad work rules and policies in its Employee Handbook, regarding employment at-will, collective action arbitration waiver, surreptitious tape recording, use of derogatory and demeaning language, and the disclosure of confidential information. On October 24, 2012, the Employer submitted a Position Statement denying the allegation that the policies are overbroad and averring the rules do not reasonably tend to chill employees in the exercise of their Section 7 rights and are lawful. Subsequently, Region 34 transferred the case to the Board's Division of Advice. On or about April 24, 2013, the parties were notified that the Division of Advice had decided to dismiss the allegations regarding the confidentiality and at-will policies, but absent settlement, to issue a complaint regarding the class action arbitration waiver, the tape recording policy, and the derogatory language policy. (See Exhibit E.) In addition, at that time, Board Field Examiner A. Heather Williams notified the parties that the

Petition would not be processed until the charge is settled or until an administrative law judge issues an opinion in the case.

Pursuant to Section 102.71(b) of the Board's Rules and Regulations, a request for review of a Regional Director's actions may be granted on the grounds "[t]hat a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent" and/or "[t]here are compelling reasons for reconsideration of an important Board rule or policy." In this case, the Regional Director departed from Board policy of permitting representation petitions to proceed despite the presence of concurrently pending unfair labor practice charges where the underlying charge, if true, would not so chill employee's Section 7 rights so as to have a significant effect on employee free choice. In addition, there are compelling reasons in this case for reconsideration of the Regional Director's application of the general "blocking" policy of holding in abeyance representation petitions and elections where an unfair labor practice charge that affects the unit is pending. The unit employees' entitlement to a hearing on the Decertification Petition is one such compelling reason. Accordingly, we ask the Board to direct the Region to proceed with a representation hearing on the Decertification Petition.

In ordering that the Petition be held in abeyance pending the resolution of a charge which merely alleges certain handbook policies maintained by the Employer are facially unlawful and in which there is no allegation, nor evidence, of enforcement of or discipline resulting from such policies, the Regional Director misinterpreted prior Board decisions and misapplied the applicable standards regarding the Board's blocking charge policy. Furthermore, by delaying the resolution of the petition "indefinitely" and effectively disenfranchising those

employees who signed the petition, the Regional Director deviated from the Board's policy of ensuring employees have a direct and substantial interest in their choice of representative.

III. STATEMENT OF THE ISSUE

Whether the Regional Director's conclusion that the Decertification Petition should be held in abeyance pending adjudication of Case No. 34-CA-090246 is contrary to established Board precedent and policy, thus requiring the Decision to be reversed and the processing of the Decertification Petition. The issue turns on whether the pending unfair labor practice charge alleges conduct which, if proven, would interfere with employee free choice in the election.

IV. ARGUMENT

A. THE REGIONAL DIRECTOR'S DECISION TO HOLD THE DECERTIFICATION PETITION IN ABEYANCE PENDING THE RESOLUTION OF THE UNFAIR LABOR PRACTICE CHARGE IS CONTRARY TO BOARD POLICY AND PROCEDURE

Under existing Board policies and precedent, the processing of representation petitions will be blocked if there are concurrent unfair labor practice charges alleging conduct which, if proven, would interfere with employee free choice in an election. Wellington Industries, Inc., 359 NLRB No. 18 (November 6, 2012), citing NLRB Casehandling Manual, Part Two, Representation Proceedings, Sec. 11730, *et seq.* The rationale is that the unfair labor practice charges, if true, would destroy the "laboratory conditions" necessary to permit employees to cast their ballots freely. See Mark Burnett Prods. & Stephen R. Frederick, 349 NLRB 706, 706 (2004), citing General Shoe Corp., 77 NLRB 124, 127 (1948). Thus, generally, unless the charging party requests the Board to proceed, the Board will decline to make representation determinations while unfair labor practice charges that affect the unit are pending. For example, pursuant to the Board's "blocking charge" rule, the Board has held in abeyance a

decertification petition where charges were filed alleging the employer unlawfully participated in, or supported, the decertification campaign. See SFO Good-Nite Inn, LLC, 357 NLRB No. 16, n.22 (July 19, 2011), citing U.S. Coal Co., 3 NLRB 398, 398 (1937) (establishing policy of refusing to process representation petitions when related unfair labor practice charges are pending).

Various exceptions to the “blocking charge” rule have developed. The Board’s Case Handling Manual specifically enumerates exceptions to the Board’s general policy:

There may be situations where, in the absence of a request to proceed . . . the Regional Director is of the opinion that the employees could, under the circumstances, exercise their free choice in an election and that the R[epresentation] case should proceed notwithstanding the existence of a concurrent Type I or Type II unfair labor practice case and the absence of a request to proceed or a waiver.

Factors: The following are among the factors to be considered under this section.

- (a) The character, scope, and timing of the conduct alleged in the charge, and the conduct’s tendency to impair the employees’ free choice
- (b) The size of the work force relative to the number of employees involved in the events or affected by the conduct alleged in the charge
- (c) Whether the employees were bystanders to or the actual targets of the conduct alleged in the charge
- (d) The entitlement and interest of the employees in an expeditious expression of their preference regarding representation
- (e) The relationship of the charging parties to labor organizations involved in the representation case
- (f) The showing of interest, if any, presented in the R[epresentation] case by the charging party
- (g) The timing of the charge.

See NLRB Case Handling Manual, Part 1, Section 11731.2 “Free Choice Possible Notwithstanding Charge.” In this case even assuming the Handbook policies are found to violate

the Act¹, such violations would not have a tendency to impair employee free choice. As previously stated, the charge in this case concerns only the facial validity of the policies, not the enforcement thereof and there is no significant threat to the ability of employees to cast a free and uncoerced vote. Indeed, if the Employer were to enforce these rules during the pendency of the instant representation case, assuming the validity of the Board's theory, objections to conduct affecting the results of the election or additional charges would sufficiently protect the rights of employees. However, to hold the ability of employees to participate in a secret ballot election hostage to the theoretical interference with Section 7 rights deprives employees of their right to decide whether they wish to be represented by the Union, in contravention of the primary purpose of the Act².

In addition, the present case is wholly unlike those cases in which the Board applied the Board's blocking charge policy and which involved allegations going to the existence of a question concerning representation, actions of the employer that undermined the Union, or actions of the employer that actually interfered with the Section 7 rights of employees. See Mark Burnett Prods. & Stephen R. Frederick, 349 NLRB 706 (2004) (allegations of unlawful withdrawal of recognition and refusal to sign contract); Wellington Industries, Inc., 359 NLRB No. 18 (November 6, 2012) (delay in processing deauthorization election appropriate based on unfair labor practice charges alleging unlawful refusal to bargain). These cases are clearly distinguishable from the present case. In those cases, the pending unfair labor practice charges, if proven, involved employer conduct that would have tended to have a direct effect on

¹ The Employer vigorously denies its policies are unlawful for the reasons set forth in its Position Statement filed in response to the ULP, and thus, the policies cannot interfere with employee free choice as a matter of law.

² We note that the challenged handbook policies were in effect at the time of the 2012 vote resulting in the initial certification of Local 488, IBEW without any allegation that these rules interfered with the ability of eligible voters to cast uncoerced ballots. Nothing has changed as of the filing of the instant Petition warranting a different conclusion.

employees' representation choice. In contrast, in the instant case, the unfair labor practice charge alleges the facial validity of policies, not Employer conduct.

The Board has declined to hold representation petitions in abeyance pending the resolution of unfair labor practice charges, where the alleged unlawful conduct would not reasonably interfere with the ability of employees to cast an uncoerced vote. For example, in Sequoias Portola, 354 NLRB No. 74 (Aug. 31, 2009), abrogated on other grounds by New Process Steel, L.P. v. NLRB, 130 S. Ct. 2635 (June 17, 2010), the Board held an election should go forward where the pending unfair labor practice charge alleged that the petitioning union was dominated by another employer. Overruling the Regional Director's decision to hold the representation case in abeyance while he investigated the 8(a)(2) allegations, the Board wrote, "Allowing the unrelated employer-domination charge to block the representation petition here, before any such determination has been made with respect to either the Petitioner or the current Employer, delays, for an indeterminate, and possibly lengthy amount of time, the employees' opportunity to exercise their Section 7 rights. Therefore, we find that, in these circumstances, the better practice is to process the representation petition and leave the determination of the [unfair labor practice charge] to a later date when that allegation and its impact . . . is fully litigated in the unfair labor practice proceeding." Sequoias Portola, 354 NLRB No. 74, at Slip. Op. 1-2. Similarly, here, allowing the, essentially, unrelated charge to block the Decertification Petition will delay for an indeterminate and possibly lengthy time the employees' opportunity to exercise their Section 7 rights. As such, the Board should order the Petition to go forward.

To this point, the Regional Director's Decision in this case ignores the fundamental fact that even if the Board eventually finds the Employer violated the Act by maintaining the Handbook policies, such a violation does not rise to the level of conduct which

would so significantly affect employee choice in the election as to justify essentially eliminating *all employee choice* of representation until the resolution of that charge. The policy considerations underlying the general Board policy of declining to make representation decisions while unfair labor practice charges that affect the unit are pending are not applicable, and the fundamental purpose of the Act – “the protection and promotion of employee freedom of choice – choice with respect to the initial decision to engage in or refrain from collective bargaining, and choice regarding the selection of a bargaining representative,” MV Transportation, 337 NLRB 770, 772 (2002), overruled on other grounds, UGL-UNICCO Service Company & Area Trades Council, 357 NLRB No. 76 (August 26, 2011) – must be recognized. The Regional Director’s decision to the contrary ignores well-established precedent and is contrary to the Board’s overarching policy to encourage and facilitate employees’ ability to exercise their Section 7 rights. Accordingly, the Decision to hold the petition in abeyance should be overruled.

**B. THE ACT’S POLICY OF ENCOURAGING EMPLOYEES’
EMPLOYEES ABILITY TO EXERCISE THEIR SECTION 7
RIGHTS IS A COMPELLING REASON TO RECONSIDER
THE APPLICATION OF THE GENERAL “BLOCKING”
POLICY TO THE INSTANT CASE**

Pursuant to Section 102.71(b)(2) of the Board’s Rules and Regulations, the Board should grant the request for review of the Regional Director’s actions because there are “compelling reasons for reconsideration of an important Board rule or policy.” For all of the reasons stated above, MasTec’s employees’ entitlement to an election is a compelling reason for the Board to reconsider the Regional Director’s application of the general “blocking” policy in the instant case. Here, the pending unfair labor practice charge, even if found to have merit, would not affect the employees’ free choice in their representation case.

V. CONCLUSION


The Regional Director's Decision to hold the Decertification Petition in abeyance is inconsistent with established procedures in representation determinations, and the Board's general blocking policy should not be applied to this case.

WHEREFORE, for all of the foregoing reasons, the Employer respectfully requests that the Board:

- (1) Grant this Request for Review; and
- (2) Order the processing of the decertification petition filed in this matter.

JACKSON LEWIS LLP
666 Third Avenue
29th Floor
New York, New York 10017
(212) 545-4000
(212) 972-3213 facsimile

Dated: May 6, 2013
New York, New York

By: 
Eric P. Simon

ATTORNEYS FOR EMPLOYER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Employer's Request for Review of the Regional Director's Decision to Hold the Petition for Decertification in Abeyance was served upon the following for filing this sixth day of May 2013, via Federal Express overnight mail, postage prepaid:

International Brotherhood of Electrical
Workers, Local 488, AFL-CIO
501 Main Street
Monroe, CT 06468

Thomas Meiklejohn
Livingston Adler Pulda Meilejohn & Kelly P.C.
557 Prospect Avenue
Hartford, CT 06105

Mr. John Murray
51 Montgomery Street, 2nd Floor
Westfield, MA 01085

John S. Cotter
Officer-In-Charge
National Labor Relations Board
SubRegion 34
450 Main Street
Suite 410
Hartford, CT 06105

A handwritten signature in black ink, appearing to read "Eric Simon", written over a horizontal line.

Eric P. Simon

EXHIBIT A

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

DO NOT WRITE IN THIS SPACE

Case No
01-RD-103288

Date Filed
April 22, 2013

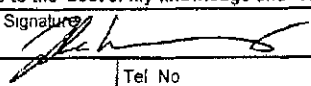
INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

- 1 PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made) (Check One)
- ☐ RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees
- ☐ RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner
- ☒ RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded
- ☐ UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No _____
- ☐ AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No _____ Attach statement describing the specific amendment sought

2 Name of Employer Mas. Tec North America, Inc Dimas Medeiros		Employer Representative to contact Dimas Medeiros	Tel No 716 - 713 - 9113
3 Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 91 Prestige Park Circle, East Hartford, CT 06108		Fax No	
4a Type of Establishment (Factory, mine, wholesaler, etc) Satellite installation and repair	4b Identify principal product or service	Cell No	e-Mail
5 Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification) Included All full-time and regular part-time field technicians and field warehouse personnel employed by the Employer at its Durham, CT facility Excluded office clerical employees and guards, professional employees and supervisors as defined in the Act		6a Number of Employees in Unit Present 43 Proposed (By UC/AC)	6b Is this petition supported by 30% or more of the employees in the unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <small>*Not applicable in RM, UC, and AC</small>

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a <input type="checkbox"/> Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state)	7b <input type="checkbox"/> Petitioner is currently recognized as Bargaining Representative and desires certification under the Act		
8 Name of Recognized or Certified Bargaining Agent (If none, so state) International Brotherhood of Electrical Workers, Local 488, AFL-CIO		Affiliation	
Address 721 Main Street Monroe, CT 06468		Tel No 203 - 452 - 7679	Date of Recognition or Certification 4/20/12
		Cell No	Fax No 203 - 459 - 2553
9 Expiration Date of Current Contract. If any (Month, Day, Year) N/A		10 If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)	
11a Is there now a strike or picketing at the Employer's establishment(s) Involved? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		11b If so, approximately how many employees are participating?	
11c The Employer has been picketed by or on behalf of (Insert Name) _____, a labor organization, of (Insert Address) _____ Since (Month, Day, Year) _____			
12 Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above (If none, so state)			
Name	Address	Tel No	Fax No
		Cell No	e-Mail
13 Full name of party filing petition (If labor organization, give full name, including local name and number) John Murray			
14a Address (street and number, city, state, and ZIP code) 51 Montgomery Street, floor 2 Westfield, MA 01085		14b Tel No 413-387-5402	14c Fax No
		14d Cell No	14e e-Mail
15 Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)			
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) John Murray	Signature 	Title (if any) An Individual	
Address (street and number, city, state, and ZIP code) 51 Montgomery St Flr 2 Westfield, MA 01085		Tel No	Fax No
		Cell No 413-387-5402	e-Mail

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary, however, failure to supply the information will cause the NLRB to decline to conduct its proceedings.

EXHIBIT B



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 34



MAS TEC NORTH AMERICA, INC. Employer and JOHN MURRAY, AN INDIVIDUAL Petitioner and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 488, AFL-CIO Union	Case 01-RD-103288
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **April 29, 2013** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410, Hartford, CT 06103, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony. Form NLRB-4669, *Statement of Standard Procedures in Formal Hearings Held Before The National Labor Relations Board Pursuant to Petitions Filed Under Section 9 of The National Labor Relations Act*, is attached.

Dated: April 22, 2013

Jonathan B. Kreisberg, Regional Director
National Labor Relations Board
Region 1/Subregion 34

EXHIBIT C



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 34
450 MAIN ST STE 410
HARTFORD, CT 06103-3078

Agency Website: www.nlrb.gov
Telephone: (860)240-3522
Fax: (860)240-3564

April 23, 2013

Mr. John Murray
51 Montgomery Street, 2nd Fl
Westfield, MA 01085

Re: MAS TEC NORTH AMERICA
Case 01-RD-103288

Dear Mr. Murray:

This is to notify you that pursuant to Agency policy, the above-captioned petition is being held in abeyance pending investigation of the unfair labor practice charge filed in Case No. 34-CA-090246. Accordingly, the hearing scheduled for Monday, April 29, 2013, has been postponed indefinitely.

Under the provisions of Section 102.71 of the Board's Rules and Regulations, a request for review of this decision to block the above-captioned petition may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found under "E-gov" on the Board's web site. This request must be received by the Board in Washington by May 6, 2013.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John S. Cotter".

John S. Cotter
Officer-In-Charge

cc:

Dimas Medeiros
Mas Tec North America, Inc.
91 Prestige Park Circle
East Hartford, CT 06108

International Brotherhood Of Electrical
Workers, Local 488, AFL-CIO
501 Main St
Monroe, CT 06468-1116

Eric P. Simon, Esq.
Jackson Lewis LLP
666 Third Avenue
New York, NY 10017

Thomas Meiklejohn
Livingston Adler Pulda Meiklejohn &
Kelly P.C.
557 Prospect Ave
Hartford, CT 06105-2922

EXHIBIT D

Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
AMENDED CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
34-CA-090246	November 21, 201

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer Mas Tec North America, Inc.	b. Tel. No. (860) 349-0208	c. Cell No.
d. Address (street, city, state ZIP code) 300 Ozick Drive Durham, CT 06422-1022	e. Employer Representative David Presley	f. Fax No. ()
		g. e-Mail
		h. Dispute Location (City and State) Durham, CT
i. Type of Establishment (factory, nursing home, hotel) Installation contractor	j. Principal Product or Service Direct TV services	k. Number of workers at dispute location approximately 60

1. The above-named employer has engaged in and is engaging unfair labor practices within the meaning of section 8(a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

For the last six months and continuing, the Employer has maintained the following overly broad work rules and policies in its Employee Handbook:

At-will employment policy; dispute resolution policy; tape recording policy; derogatory language rule; confidential information rule

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

International Brotherhood of Electrical Workers Local 488

4a. Address (street and number, city, state, and ZIP code)

501 Main Street
Monroe, CT 06488

4b. Tel. No.

(203) 462-7679

4c. Cell No. ()

4d. Fax No. 203-468-2553

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

International Brotherhood of Electrical Workers, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Tel. No.

(860) 233-9821

Office, if any, Cell No.

By Thomas W. Melklejohn

Thomas W. Melklejohn

(signature of representative or person making charge)

Fax No. 860-232-7818

Address

LAPMK, P.C., 557 Prospect Avenue,
Hartford, CT 06105

Date:

11/21/12

e-Mail

twmelklejohn@lapmk.org

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT E

From: Williams, A. Heather [mailto:AHeather.Williams@nrlb.gov]
Sent: Wednesday, April 24, 2013 10:21 AM
To: Simon, Eric P. (NYC)
Subject: Mas Tec 34-CA-090246 Advice follow-up

Dear Eric:

I hear from your secretary that you are in Buffalo today. I hope you plan on stopping by the Anchor Bar!

As you know, Advice has gotten back to us on 34-CA-090246 Mas Tec.

Advice has concluded that the following rules violate Section 8(a)(1):

- a dispute resolution policy prohibiting employees from arbitrating disputes as a class
- a policy prohibiting the recording of conversations at work
- prohibition on the "use of abusive, threatening or derogatory language towards employees, customers, or management"

Advice has concluded that the following rules are not a violation:

- policy prohibiting employees from disclosing confidential information
- an at-will employment clause that can only be modified by the Chief Executive Officer and Group President.

The Region intends to issue complaint at the end of this month unless we receive word that the Employer is amenable to considering settlement. Please also be advised that the decision from Advice is also blocking the recently filed decertification petition. That petition will not be processed until this case is either settled or until we have an ALJ's decision.

Please call me at your earliest convenience.

All the best,

A. HEATHER WILLIAMS
FIELD EXAMINER
NATIONAL LABOR RELATIONS BOARD
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